

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

WASHINGTON, D.C. 20044

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 (COVLING WSH)

CABLE: COVLING

WRITER'S DIRECT DIAL NUMBER

DOCKET FILE COPY ORIGINAL

ACHESON HOUSE
46 HERTFORD STREET
LONDON W1Y7TF ENGLAND
TELEPHONE: 44-71-495-5655
TELEFAX: 44-71-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1598

April 21, 1993

BY HAND

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 30554

RECEIVED

APR 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments Of The National
Football League
Inquiry Into Sports Programming
Migration (PP Docket No. 93-21)

Dear Ms. Searcy:

On behalf of The National Football League,
transmitted herewith for filing are an original and nine (9)
copies of its Reply Comments in the above-referenced
proceeding.

The reply was prepared for filing with the
Commission on April 12, but it was just learned by this office
that due to an administrative error, the pleading was
apparently not delivered to and received by the Secretary's
office. The inadvertent error was discovered in the course of
securing copies of replies submitted to date in this
proceeding. For this reason, and in the interest of
developing a more complete record, it is respectfully
requested that the enclosed reply be accepted for filing in
the above-referenced Notice of Inquiry proceeding.

Any question regarding this matter should be
directed to the undersigned.

EX PARTE OR LATE FILED

RECEIVED

APR 21 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FCC 93-77

In the Matter of)
Implementation of Section 26)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)
Inquiry Into Sports Programming)
Migration)

PP Docket No. 93-21

REPLY COMMENTS OF THE NATIONAL FOOTBALL LEAGUE

The National Football League ("NFL" or "League") submits the following reply comments as provided for in the Commission's Notice of Inquiry in this matter.

Over three dozen commentators filed in response to the Commission's Notice of Inquiry. Those commentators included some (but not all) of the broadcast networks, other broadcast entities, such as the Association of Independent Television Stations ("INTV") and the National Association of Broadcasters ("NAB"), other professional sports leagues, college athletic conferences, and cable television interests. Based on those comments, two conclusions are compelled by the record.

First, there is no meaningful problem of "migration" or "siphoning" of sports programming; if anything, broadcast television carries more sports programming today than it did in 1980. To the extent that cable television carries increasing amounts of sports programming, that programming is in addition to that which is carried on broadcast television, and has therefore increased the overall availability of sports programming to fans.

Second, whatever "migration" may or may not have occurred in other contexts, there has been no migration whatsoever of NFL programming. No party even suggested that NFL programming had migrated from broadcast to cable television, and no party suggested that regulation of NFL programming would be desirable or appropriate. Nor did anyone take issue with the NFL's unique policies that protect the interests of local area fans, or with the reliability of the NFL's commitments with respect to possible future use of pay-per-view television.

The record is thus devoid of a basis that would justify any legislative or regulatory action with respect to sports programming, much less an amendment to the 1961 Sports Broadcasting Act, which has enhanced the availability of sports programming to consumers. Indeed, at least one major network (ABC) confirmed the NFL's position that the Act has benefitted both sellers and consumers of sports programming.

The NFL submits the following reply comments to respond briefly to the comments of INTV and the New York City Department of Telecommunications and Energy ("NYDTE").

1. INTV Comments

INTV's comments rest on two fundamentally flawed premises -- first, that Congress has directed the Commission to regulate and restrict the showing of sports events on non-broadcast television; and second, that the economic interests of INTV's members should be of greater concern to the Commission

than the range of programming options presented to fans or the

extent to which agents, programmers, respond efficiently and

INTV's showing of "migration" is based on isolated examples, with little or no effort at providing the Commission with a comprehensive picture. It is more compelling to note that two broadcast networks -- CBS and Fox -- elected not to file comments at all (perhaps the most eloquent testimony on the scope of the problem) and that two others -- ABC and NBC -- concluded that no "migration" problem exists. Nor did the NAB echo INTV's isolated call for reregulation of the sale of sports programming.


With respect specifically to professional football, INTV is silent. It identifies no example of migration and presents not a single scrap of evidence -- no matter how limited or anecdotal -- that would support regulating the sale of football telecasts. Nor did any other commentator offer such testimony. The only conclusion that reasonably can be drawn is that there has been no migration of NFL programming and that there is no basis for legislative or regulatory action.^{2/}

2. NYDTE Comments

NYDTE proposes that the Commission establish an Advisory Committee to study issues of sports programming

^{2/} In this regard, INTV's effort to distinguish the D.C. Circuit's opinion in *Home Box Office v. FCC*, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977) is entirely ineffective. Not only is there no record that would support imposition of sports siphoning rules, but it is clear from the HBO opinion that First Amendment considerations likely deprive the Commission of any authority to do so. And even INTV does not suggest that the Cable Act broadened the Commission's authority to impose siphoning rules or in any way undercut the HBO decision.

migration and recommend appropriate responses. But it is exactly those issues that are currently being studied by the Commission and which will be reviewed on an on-going basis for the next fifteen months. In light of the study currently underway, the NFL submits that the establishment of an Advisory Committee is entirely unnecessary and would simply impose needless burdens on



legislative activity, either with respect to sports programming generally or the 1961 Sports Broadcasting Act specifically, is necessary or appropriate at this time.

Respectfully submitted,

THE NATIONAL FOOTBALL LEAGUE

By:

Gregory M. Schmidt pab
Gregory M. Schmidt

Gregg H. Levy
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

ITS ATTORNEYS

Dated: April 12, 1993